

Mar 10, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HAYLIE K.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

No. 4:19-CV-05045-JTR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 13, 15. Attorney D. James Tree represents Haylie K. (Plaintiff); Special Assistant United States Attorney David J. Burdett represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

¹ Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

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Plaintiff was born in 1979 and was 34 years old as of her date last insured in 2014. Tr. 24. She has a GED and has worked primarily in fast food, bartending, and as a receptionist. Tr. 225, 773. Plaintiff alleged disability beginning in 2008, just before her twin children were born. She struggled for many years with neck and back pain, leading to abuse of pain medications, and depression. Tr. 51-53, 57-58, 417-19, 593-95. She went through addiction treatment in 2012 and was maintained on suboxone treatment. Tr. 53-55. In September 2013 she was diagnosed with ulcerative colitis, which lead to increased joint pain and inflammation. Tr. 55, 651, 654, 657, 737.

STANDARD OF REVIEW

² The ALJ declined to reopen a previous application that was denied on initial review on June 26, 2012. Tr. 15-16.

1 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
2 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
3 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
4 only if it is not supported by substantial evidence or if it is based on legal error.
5 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
6 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
7 1098. Put another way, substantial evidence is such relevant evidence as a
8 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
9 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
10 rational interpretation, the Court may not substitute its judgment for that of the
11 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
12 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
13 administrative findings, or if conflicting evidence supports a finding of either
14 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
15 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
16 supported by substantial evidence will be set aside if the proper legal standards
17 were not applied in weighing the evidence and making the decision. *Browner v.*
18 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

19 SEQUENTIAL EVALUATION PROCESS

20 The Commissioner has established a five-step sequential evaluation process
21 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*
22 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of
23 proof rests upon the claimant to establish a prima facie case of entitlement to
24 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a
25 claimant establishes that a physical or mental impairment prevents the claimant
26 from engaging in past relevant work. 20 C.F.R. § 404.1520(a)(4). If a claimant
27 cannot perform past relevant work, the ALJ proceeds to step five, and the burden
28 shifts to the Commissioner to show (1) the claimant can make an adjustment to

1 other work; and (2) the claimant can perform specific jobs that exist in the national
2 economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-94 (9th
3 Cir. 2004). If a claimant cannot make an adjustment to other work in the national
4 economy, the claimant will be found disabled. 20 C.F.R. § 404.1520(a)(4)(v).

5 ADMINISTRATIVE DECISION

6 On April 23, 2018, the ALJ issued a decision finding Plaintiff was not
7 disabled as defined in the Social Security Act.

8 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
9 activity from the alleged onset date of March 7, 2008, through the date last insured
10 of September 30, 2014. Tr. 18.

11 At step two, the ALJ determined Plaintiff had the following severe
12 impairments: ulcerative colitis since September 2013, inflammatory arthritis,
13 bilateral L5 spondylosis, cervical degenerative disc disease, obesity, migraine
14 headaches, retinitis pigmentosa, major depressive disorder, generalized anxiety
15 disorder, and history of opioid dependence. *Id.*

16 At step three, the ALJ found Plaintiff did not have an impairment or
17 combination of impairments that met or medically equaled the severity of one of
18 the listed impairments. Tr. 18-20.

19 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
20 she could perform work at the light exertional level, except:

21 she was limited to work that would provide a sit/stand option for up to
22 five to ten non-continuous minutes per hour that would not involve
23 leaving a work station; that would not require more than occasional
24 climbing of ramps/stairs, balancing, crouching, crawling, kneeling,
25 and stooping, or any climbing of ladders, ropes or scaffolds; that
26 would not require any concentrated exposure to vibration or any
27 exposure to unprotected heights, dangerous moving machinery, or
28 commercial driving; that would not require driving at night; that
would not require the performance of more than simple routine

1 predictable tasks or involve more than superficial contact with the
2 general public; and that would provide ready access to a restroom.

3 Tr. 20.

4 At step four, the ALJ found Plaintiff was unable to perform her past relevant
5 work as a dietary aide, fast food worker, food deliverer, phlebotomist, or medical
6 receptionist. Tr. 24.

7 At step five, the ALJ determined that, based on the testimony of the
8 vocational expert, and considering Plaintiff's age, education, work experience, and
9 RFC, there were jobs that existed in significant numbers in the national economy
10 that Plaintiff was capable of performing, including the jobs of mail clerk, office
11 helper, and collator operator. Tr. 24-25.

12 The ALJ thus concluded Plaintiff was not under a disability within the
13 meaning of the Social Security Act at any time from the alleged onset date through
14 the date last insured of September 30, 2014. Tr. 26.

15 ISSUES

16 The question presented is whether substantial evidence supports the ALJ's
17 decision denying benefits and, if so, whether that decision is based on proper legal
18 standards.

19 Plaintiff contends the ALJ erred by (1) improperly discounting Plaintiff's
20 symptom testimony; (2) improperly weighing the medical opinion evidence; and
21 (3) improperly weighing the third-party evidence.

22 DISCUSSION

23 1. Plaintiff's symptom statements

24 Plaintiff alleges the ALJ erred in rejecting her symptom testimony without
25 providing adequate reasons. ECF No. 13 at 3-16. Specifically, Plaintiff argues the
26 ALJ improperly discounted her testimony based on minimal daily activities, her
27 lack of treatment, the objective evidence, and misconstrued statements interpreted
28 as inconsistencies.

1 It is the province of the ALJ to make credibility determinations. *Andrews v.*
2 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be
3 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
4 (9th Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for
5 rejecting a claimant's testimony must be "specific, clear and convincing." *Smolen*
6 *v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834
7 (9th Cir. 1995). "General findings are insufficient: rather the ALJ must identify
8 what testimony is not credible and what evidence undermines the claimant's
9 complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
10 1993).

11 The ALJ found Plaintiff's medically determinable impairments could
12 reasonably be expected to cause the alleged symptoms; however, she found
13 Plaintiff's statements concerning the intensity, persistence and limiting effects of
14 her symptoms to not be entirely consistent with the medical evidence and other
15 evidence in the record. Tr. 21. The ALJ found the objective medical evidence did
16 not fully support the level of limitation claimed, and noted Plaintiff sought very
17 little treatment for her conditions during the relevant period, frequently denied
18 symptoms that she later claimed contributed to her disability, and engaged in
19 activities of daily living that did not support her claim. Tr. 21-23. The ALJ further
20 found no acceptable medical source reported disabling limits during the relevant
21 period, and noted the record suggested a pattern of inconsistency and
22 overstatement of symptoms and limitations. Tr. 22-23. While the court finds not
23 all of the ALJ's reasons withstand scrutiny, the ALJ offered specific, clear and
24 convincing reasons for her assessment of Plaintiff's subjective reports.

25 ***a. Course of treatment and denial of symptoms***

26 Unexplained or inadequately explained reasons for failing to seek medical
27 treatment can cast doubt on a claimant's subjective complaints. *Fair v. Bowen*,
28 885 F.2d 597, 603 (9th Cir. 1989). The ALJ noted Plaintiff sought very little

1 treatment for her primary impairments during the relevant period, and received no
2 treatment for her musculoskeletal problems for 18 months. Tr. 21. She also noted
3 Plaintiff failed to receive any specialized treatment during the relevant period for
4 migraines, her ocular condition, or mental health impairments, and often denied
5 any symptoms relating to these conditions. Tr. 22-23.

6 Plaintiff argues the ALJ is incorrect, as Plaintiff did mention all of these
7 conditions to her medical providers during the relevant period. ECF No. 13 at 11.
8 While Plaintiff is correct that the record contains references to each of Plaintiff's
9 impairments during the relevant period, the ALJ's characterization of the record as
10 lacking specialized or more than "very little" treatment for most of her conditions
11 is supported. Ulcerative colitis is the only condition Plaintiff received regular
12 treatment for during the relevant period, and then only for a few flares after the
13 initial diagnosis. Tr. 653-58, 737.

14 Plaintiff further argues the ALJ failed to consider explanations for her failure
15 to seek more treatment, as required by Social Security Ruling 16-3p. ECF No. 13
16 at 11. She argues she had legitimate reasons for her failure to seek more treatment,
17 including being told treatments for her ophthalmological condition were limited,
18 her mental health and migraines were maintained on medications, and she was not
19 receiving answers regarding the cause of her symptoms, so she "just stopped
20 trying." *Id.* at 12. While these factors may explain Plaintiff's failure to seek more
21 treatment, they do not explain away her denial of symptoms. The ALJ pointed to
22 numerous instances when Plaintiff denied joint pain and stiffness, denied
23 psychological symptoms, and denied headaches during the relevant period. Tr. 22-
24 23. The ALJ legitimately relied on these records as evidence of inconsistencies
25 undermining Plaintiff's later assertions that she frequently suffered from these
26 conditions. While Plaintiff's interpretation of the record is rational, the ALJ's
27 interpretation is also supported by substantial evidence. "[W]hen the evidence is
28 susceptible to more than one rational interpretation, we must uphold the ALJ's

findings if they are supported by inferences reasonably drawn from the record.”
Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012).

b. Objective medical evidence and lack of disabling opinion evidence

Although it cannot serve as the sole ground for rejecting a claimant’s symptom statements, objective medical evidence is a “relevant factor in determining the severity of the claimant’s pain and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Similarly, the ALJ must consider information provided by medical sources and other sources. 20 C.F.R. 404.1529(c).

The ALJ reasonably relied upon the records showing mild or no objective findings on exam. Tr. 21-22 (citing tr. 591, 649, 652, 654, 656, 658, 697, 737, showing minimal objective findings regarding ulcerative colitis; tr. 595, 620, 649, 652, 654, 655-56, 737, showing mild or normal musculoskeletal exams). The ALJ also reasonably considered the lack of any disabling opinion evidence from the relevant period in reaching the conclusion that Plaintiff’s allegations of disabling symptoms were not supported by the objective evidence. Tr. 22.

c. Activities of daily living

A claimant’s daily activities may support an adverse credibility finding if the claimant’s activities contradict her other testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). However, the “Social Security Act does not require that claimants be utterly incapacitated to be eligible for benefits, and many home activities may not be easily transferable to a work environment where it might be impossible to rest periodically or take medication.” *Smolen v. Chater*, 80 F.3d 1273, 1287 n.7 (9th Cir. 1996).

The ALJ found Plaintiff’s allegations to be unsupported by her activities of daily living, noting her report that she had been helping family and taking care of her twins in May 2012, and had a busy summer planned in 2017 caretaking for family. Tr. 23. These two references are insufficient to support the ALJ’s

1 conclusion that Plaintiff's daily activities were inconsistent with her allegations of
2 pain and other symptoms. The record contains no details about what activities
3 Plaintiff was actually engaged in, or how frequently. Tr. 594, 926. Furthermore,
4 the activities in 2012 were reported in the context of having exacerbated Plaintiff's
5 pain. Tr. 594. Part of the treatment plan going forward was that Plaintiff would
6 cut back on activities that hurt her. Tr. 595. These two incidents do not constitute
7 evidence of Plaintiff's daily life, and the ALJ failed to explain how either one
8 demonstrates any inconsistency with Plaintiff's alleged limitations.

9 However, any such error was harmless as the ALJ offered other clear and
10 convincing reasons for her assessment of Plaintiff's allegations. *See Carmickle v.*
11 *Comm'r of Soc. Sec. Admin*, 533 F.3d 1155, 1163 (9th Cir. 2008) (upholding an
12 adverse credibility finding where the ALJ provided four reasons to discredit the
13 claimant, two of which were invalid); *Batson v. Comm'r of Soc. Sec. Admin.*, 359
14 F.3d 1190, 1197 (9th Cir. 2004) (affirming a credibility finding where one of
15 several reasons was unsupported by the record).

16 ***d. Overstatement of symptoms***

17 Finally, the ALJ indicated Plaintiff's reports were not "the most reliable
18 evidence" due to indications of inconsistency and overstatement of her symptoms.
19 Tr. 22-23. By way of example, the ALJ pointed to Plaintiff's assertion that she
20 was "blind," her inaccurate report how many trigger point injections she had
21 received, and her "focus upon qualifying for Social Security disability benefits," as
22 demonstrated by her concern that her symptoms were not being sufficiently
23 documented in her medical records. *Id.* Plaintiff disputes the ALJ's interpretation
24 of these events as showing any conclusive evidence of overstatement of her
25 symptoms.

26 While an ALJ may consider evidence that a claimant has exaggerated her
27 conditions, the Court finds the ALJ's examples do not rise to such a level. The
28 Court finds the minor discrepancies to be no more than a scintilla of evidence, and

1 that Plaintiff's desire for her conditions to be accurately documented in her
2 medical file does not indicate any inappropriate fixation on receiving benefits.
3 Defendant does not argue that the ALJ's interpretation constitutes clear and
4 convincing evidence upon which to reject Plaintiff's claims. ECF No. 15 at 3-5.

5 Plaintiff asserts in her reply brief that this error alone necessitates remand, as
6 the ALJ's perception of Plaintiff as dishonest would have necessarily affected her
7 consideration of the remainder of the record as a whole. ECF No. 17 at 3. Plaintiff
8 cites to no legal support for this assertion. Thus, as stated above, the Court finds
9 this error to be harmless, as the ALJ offered other clear and convincing reasons for
10 discounting Plaintiff's statements.

11 **2. Medical opinion evidence**

12 Plaintiff alleges the ALJ improperly weighed the opinion evidence, giving
13 insufficient reasons for disregarding Plaintiff's treating provider, Lynette Marshall,
14 ARNP. ECF No. 13 at 16-18.

15 An ALJ may discount the opinion of an "other source," such as a nurse
16 practitioner, if she provides "reasons germane to each witness for doing so."
17 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

18 Ms. Marshall offered an opinion in October 2015 regarding Plaintiff's
19 physical functional abilities, opining she was capable of less than sedentary work
20 and would need frequent breaks and would have frequent absences. Tr. 813-14.
21 The ALJ gave this opinion little weight because it did "not pertain to the claimant's
22 functioning during the relevant period at issue." Tr. 24.

23 Plaintiff's insured status expired September 30, 2014. Tr. 18. Thus, she had
24 to demonstrate disability on or before that date in order to be entitled to disability
25 insurance benefits. Tr. 16. Plaintiff argues that, even though Ms. Marshall's
26 opinion was offered after Plaintiff's insured status expired, the ALJ failed to
27 consider that Ms. Marshall had been treating Plaintiff for several years, and thus
28 her opinion still related to the period at issue. ECF No. 13 at 18.

1 The Court finds the ALJ's rationale to be a germane reason for discounting
2 Ms. Marshall's opinion. The opinion is phrased entirely in the present tense and
3 makes no reference to how long Plaintiff had been impaired to the degree opined.
4 Tr. 813-14. While some of Ms. Marshall's treatment records pre-date the date last
5 insured (Tr. 736-40), indicating she would have knowledge of Plaintiff's functional
6 status prior to the date last insured, the opinion itself does not refer to any period
7 prior to the date it was completed. Therefore, the ALJ's interpretation of the
8 opinion as not pertaining to the relevant period is supported by substantial
9 evidence.

10 **3. Third party evidence**

11 Plaintiff argues the ALJ erred in rejecting the third-party evidence from her
12 husband, Chad Kroshus. ECF No. 13 at 18-19.

13 Lay witness testimony is "competent evidence" as to "how an impairment
14 affects [a claimant's] ability to work." *Stout v. Comm'r, Soc. Sec. Admin.*, 454
15 F.3d 1050, 1053 (9th Cir. 2006). An ALJ must give "germane" reasons to discount
16 evidence from these "other sources." *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir.
17 1993). However, any error on the part of the ALJ in discounting lay witness
18 testimony "is harmless where the same evidence that the ALJ referred to in
19 discrediting the claimant's claims also discredits the lay witness's claims." *Molina*
20 *v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012).

21 The ALJ rejected Mr. Kroshus' statements "for the same reasons the
22 undersigned finds the claimant's subjective complaints to be not fully consistent
23 with the objective medical evidence." Tr. 24. As the Court found no reversible
24 error in the ALJ's rationale for rejecting Plaintiff's subjective complaints, and Mr.
25 Kroshus' statements are consistent with Plaintiff's assertions, the Court finds the
26 ALJ offered sufficient germane reasons for rejecting Mr. Kroshus' testimony.

27 **CONCLUSION**

1 Having reviewed the record and the ALJ's findings, the Court finds the
2 ALJ's decision is supported by substantial evidence and free of legal error and is
3 affirmed. Therefore, **IT IS HEREBY ORDERED:**

4 1. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
5 **GRANTED.**

6 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED.**

7 The District Court Executive is directed to file this Order and provide a copy
8 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
9 and the file shall be **CLOSED.**

10 **IT IS SO ORDERED.**

11 DATED March 10, 2020.



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A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE